

MEMORANDUM CONCERNING
LAGUNA-ANACONDA
ROYALTY RENEGOTIATION

Attached hereto: Schedule 1 comprised of two pages which sets forth the historical production and royalty computations as shown on the individual monthly settlement sheets forwarded to the Pueblo by Anaconda; Schedule 2 which is a royalty computation based on actual production but adding the (b) (4) per lb. for the development allowance contained in the Circular 5 schedule; Schedule 3 which sets forth, under (C), the royalty computation based on the U.S.G.S. and Commissioner of Indian Affairs formula together with a computation of royalty under (D) based on the formula used in the October, 1970 Laguna prospecting permit sale and on which Anaconda made several bids; Schedule 4, which is a comparison of royalties paid and/or what would be due under the other three methods of calculation previously referred to in the other schedules.

Up to this point our entire stated position has, of course, been that the U.S.G.S. and Commissioner of Indian Affairs formula is the correct one to follow pursuant to the terms of the November, 1962 supplemental agreement. Whether or not that formula or some lesser formula might be a basis for settlement with Anaconda will, of course, be a matter of speculation as to what has happened and what could happen in the future. Several factors which would be somewhat influential in reaching a conclusion on our part as to a proper formula would in particular be the following items:

1. Prices received from yellow cake by Anaconda during 1969 and 1970, both from the Atomic Energy Commission and from private firms. Also the various quantities at the various prices during those two years.
2. Private sales prices for 1971 and future deliveries together with quantity commitments at those prices.
3. The rate of mill recovery of yellow cake from that contained in the ore being fed to the mill ^{and} for the milling cost per ton from 1968 and currently.

I have talked to Kerr McGee people in Oklahoma City and am advised that the industry average yellow cake price paid by the A.E.C. during 1969 and 1970 was (b) (4). The maximum price paid was (b) (4). While we do not know the minimum, Kerr McGee's price was (b) (4).

Just where Anaconda may have fallen^y in this category we do not know. The price allowed was derived from the average overall mining, milling and transportation costs during the period of six years from 1963 to 1968 inclusive. Actually 85% of the costs were allowed with \$1.60 per pound added to that figure in arriving at the A.E.C. price during 1969 and 1970. Hearsay has it that Anaconda sold uranium quite far in advance during the early or mid 1960's at very low prices, probably or possibly at prices less than the rest of the industry could even produce. I feel that our only real risk in the U.S.G.S.-Commissioner formula is that Anaconda may have sold at such low prices that we would obtain very little benefit, if any, during 1969, 1970 and possibly for some time even following that. In order to make a reasonable judgement on this we should know more about the facts as I have outlined above. I really feel that some compromise with a reasonable similarity to the October, 1970 prospecting permit sale would be preferable so that in part we could eliminate any requirement on Anaconda's part to continually have to prove their mill recovery rate and milling costs. I doubt that we could establish a fixed^{minimum} price for the yellow cake, although it would be hopeful that we might establish some minimum if they have, in effect, made long range commitments fairly well below the current prices. The best information I have been able to develop so far on prices is that current yellow cake prices are somewhere close to (b) (4) per pound with the expectation that by 1975 they should be up in the range from (b) (4) to (b) (4). After 1975 the demand is supposed to commence exceeding the supply and it should be expected that prices would even go higher. We obviously would want to participate in these higher prices in the long range future. At least for royalty purposes we also should not have to suffer if Anaconda for one reason or another decides to sell at prices less than the balance of the industry. In this connection we should probably keep in mind that in all probability Anaconda's major yellow cake customers are also very significant copper customers which could represent some influence on their establishment of sales prices.

It would seem that the very minimum, which I am not recommending at this time, would be that we would settle on an increase in royalties by addition of the (b) (4) development allowance which you will note would increase royalties to date by about (b) (4). If this was done it should only be done through a given period of time such as 1974, after which some other formula would have to take effect. This would result in some face saving for Anaconda, resulting in a lesser retroactive adjustment and it would have some basis in that at least this was done in an almost identical renegotiation between

Ranchers Exploration and Development and Kerr-McGee Corporation. There was one difference in the Kerr-McGee Corporation deal, however, in that a numerator, being the (b) (4), divided by a denominator of (b) (4) was used to multiply times the Circular 5, including development allowance price. This gave Ranchers a good bonus or retroactive adjustment through 1968 but a slight penalty during 1969 and 1970. I am certain, however, that Kerr-McGee's prices for actual sales are higher than Anaconda's and would not suggest that a numerator-denominator arrangement be considered, at least until we know considerably more about their sales prices.

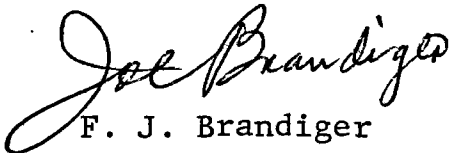
Other factors which might be considered for negotiation are as follows:

1. Since a major concern of Anaconda's would be the step-up in royalty rate from (b) to possibly (b) or higher, it might be possible to agree to a maximum of (b) or flat rate (b) if they are agreeable to giving us the higher value and we still come out far ahead of the present situation even though not as well as we might if we won our case completely in court.
2. We could propose to take our share of the yellow cake in kind and sell it in competition to Anaconda and other producers. At this time I do not know all of the ramifications involved in doing that, but I feel that there should be no insurmountable obstacles to doing it.
3. We certainly could be prepared to waive any development requirements on the 1963 leases following the initial term of these leases. While this might possibly save Anaconda a fair amount of money, it would in no way cost the Pueblo anything if we assume that Anaconda would for sure proceed with the development rather than lose the leases.
4. There is a provision in the lease agreements for requirement of an annual audit of the operations of Anaconda. According to the best information I have these audits have never been furnished by Anaconda. Consideration should be given to either requiring these audits, including a definition of the scope of operations to be audited, or in waiving the audit requirements in whole or in part as a negotiating item if Anaconda gives on their end.

I am asking Phil Ashby to write to Anaconda's attorney in Tucson requesting that they furnish the data on yellow cake prices and mill recovery and milling costs which have been referred to previously in this memorandum, in order that we may have them either at or prior to any conference with Anaconda.

At this point I do not have a reasonable fee for the Pagate Village damages nor how much consideration should be given in negotiations with Anaconda. I would, however, hope that in one way or another it would not provide a stumbling block either in negotiations with Anaconda or in obtaining a Pueblo Council approval of any settlement we might reach with Anaconda.

After review of the foregoing, together with the attached schedules, if you have any questions or comments, particularly regarding additional analysis of the situation or additional facts that we should pin down tighter prior to sitting down with Anaconda, please let me know.


F. J. Brandiger

cc: Tom Dailey
Phil Ashby
Richard Schifter